

CIRCULATING COPY UNIVERSITY
AGRICULTURE LIBRARY
JUL 16 1958



CORPORATIONS

IN THE FARM BUSINESS

by N. G. P. Krausz and Fred L. Mann

NR 797

UNIVERSITY OF ILLINOIS · COLLEGE OF AGRICULTURE
IN SERVICE IN AGRICULTURE AND HOME ECONOMICS

CONTENTS

What Is a Corporation?	3
When Should You Consider Corporate Operation?	4
What Are the Advantages of Incorporation?	5
Limited individual and corporate liability.	5
Easy distribution and transfer of ownership.	5
Continuity of operation.	5
Possible increased efficiency.	6
Tax advantages.	7
Means of improving credit status and pooling capital.	8
What Are the Disadvantages of Incorporation?	8
Initial cost	8
Tax disadvantages.	9
Formality of organization and operation.	10
How Is the Farm Business Incorporated?	10
Preincorporation (shareholders') agreement.	11
Articles of Incorporation.	13
Initial fees and federal stamp tax.	17
By-laws	18
Restrictions on stock transfer.	21
How Is the Incorporated Business Operated?	21
Management — division of authority.	21
Filing of reports.	26
How Can the Corporation Be Dissolved?	29
Involuntary dissolution	29
Voluntary dissolution	29
Dissolution before the corporation has begun business.	30
Liabilities after dissolution.	31
Sample Corporate Forms and Agreements	32
Preincorporation agreement.	32
Articles of Incorporation.	35
By-laws	37
Waiver of notice of meeting.	42
Stock transfer book page.	43
Consent to informal action by shareholders.	44

1162
no. 797
cop. 5

CORPORATIONS IN THE FARM BUSINESS

By N. G. P. KRAUSZ and FRED L. MANN*

LARGER NEEDS FOR CAPITAL and credit, and family inheritance problems, are primarily responsible for a close look at corporate farming. Inflated land prices and more mechanization have raised capital needs to as high as \$100,000 per farm worker. The movement of farm boys and girls to cities has created the serious question of how to hold the farm together for operating efficiency and still provide a fair inheritance for all of the children.

In some cases the farm corporation offers a solution to these problems. Incorporation can bring together the assets of several persons in a pooling of capital, and its more formal type of organization can improve the credit opportunities of the business. It allows each member of the family to share fully in the inheritance but can at the same time regulate his rights to sell his interest and to manage the farm.

The object of this circular is to show when and how the farmer may use incorporation in his farm business.¹ The following material is not a substitute for professional legal advice and assistance. Adapting the corporation type of organization to the individual farm business will usually require expert legal help.

What Is a Corporation?

A corporation is a legal entity authorized by state law. Any kind of business worth more than \$1,000 may be incorporated. The procedure for incorporating a business is outlined in the law and must be followed exactly. The corporation begins its legal existence when the state, satisfied that this procedure has been followed, issues a certificate of incorporation.

Once organized, a corporation is treated as an individual in its dealings with others. The owners of the corporation (called shareholders) are issued certificates representing shares to show the interest each holds in the corporate assets. The shareholders elect directors

* N. G. P. KRAUSZ, Associate Professor of Agricultural Law; and FRED L. MANN, formerly Assistant in Agricultural Law. Both authors are members of the Illinois Bar.

¹ The advantages and disadvantages of the farm partnership are discussed in Circular 786, "Partnerships in the Farm Business." This circular can be obtained from your farm adviser or by writing to the College of Agriculture, University of Illinois, Urbana, Illinois.



James and Paul Tiller and their father, Robert, have combined their farming resources—machinery, cattle, land, and know-how—in Tiller Farms, Inc. The forms they used in their farm corporation are on pages 32 through 44. (Fig. 1)

to represent them in business policy and management. Directors in turn elect officers who take care of the everyday affairs of carrying on the business. In a farm corporation, the shareholders usually elect themselves directors, and as directors they also elect themselves officers.

When Should You Consider Corporate Operation?

As a general rule, incorporation is a possibility in any business of adequate size. Many family farms are large enough to at least consider corporate operation.

In farm corporations shareholders frequently would be persons who have worked together in the past—parents and children, brothers and sisters, landlords and tenants, existing farm partnerships, or entire farm families. Past working relations are not necessary, however. People who have never been associated in business may find that incorporation is the solution to their problems. Unrelated indi-

viduals who separately do not have enough capital to become established in farming might combine their assets to advantage in a farm corporation. Incorporation might be the answer for heirs of an estate that cannot otherwise be economically divided.

For farmers planning an operation involving high risk (truck farming, sheep-feeding, etc.), the corporation is a means of limiting possible losses to the assets in the business.

When farming is only a part of an individual's total business enterprise, he may consider incorporating his farm business to protect his outside assets. Because a shareholder's liability is limited in a corporation, only the assets he places in the farm corporation will be affected by farm profits or losses.

What Are the Advantages of Incorporation?

Limited individual and corporate liability

A shareholder is liable for debts of a corporation only to the extent of the shares of stock he owns unless he has signed as surety for a corporate debt. It must be kept in mind, however, that if a corporation becomes insolvent, shares in it are worthless. If this happens and all of a farmer's assets are in shares of the corporation, he loses all of his property.

Just as the shareholder is not personally liable for corporate debts, a corporation has no liability for a shareholder's personal obligations.

Easy distribution and transfer of ownership

The assets of a corporation are divided into parts called shares. These shares are represented by certificates of stock. A share can be transferred by delivering the certificate to the new shareholder and registering the transfer on the corporation books.

The owner of a share of stock may sell it, leave it to designated persons by will, make a gift of it, or allow it to go to his heirs by law of descent, without breaking up the business. Shares of stock also provide a simple way for the oncoming generation to gradually buy into the farm business.

Continuity of operation

A corporation exists as long as the shareholders desire it and it fulfills the requirements of the law. It can continue to function throughout the changes in ownership caused by one generation replacing another, because shares of stock, rather than farmland, livestock, and equipment, are passed to the next generation.



Shares in a farm corporation are easily transferred and provide a simple way for oncoming generations to assume a part in the farm business. Here Robert Tiller presents his daughter Ann with shares of stock in Tiller Farms, Inc. upon her graduation from high school. (Fig. 2)

Possible increased efficiency

The very nature of incorporation compels the keeping of accurate records, which is more easily neglected under other business systems. Keeping adequate records, advance planning, and reporting results tend to promote efficiency.

The by-laws of a corporation usually designate how authority will be delegated, business policy, and organizational and operational procedures to be followed. This aids in reducing duplication of effort and conflict of policy, which may be present in more casual types of business organization. Although incorporation is not a substitute for the ability of the business associates to get along together, it can reduce sources of friction and presents a means of settling business disputes more easily.

Such a formal structural system often results in reduced expenses and increased profits.

Tax advantages

In some cases it is possible to reduce income taxes by incorporation. The first \$25,000 of taxable corporate income is taxed at 30 percent. An additional 22 percent is charged on income over \$25,000. The personal income tax rate for a married person is 30 percent on taxable income from \$12,000 to \$16,000. It increases to 53 percent at \$36,000.

At certain levels of farm income, therefore, taxes may be reduced by splitting the income between the individual (or individuals) and the corporation. This may be done by paying out part of the corporation income as salaries and retaining the balance in the corporation as accumulated earnings.¹

Money retained in the corporation cannot later be paid out to the individual shareholders without further taxation. Ordinary income is often shifted to capital gain, however, which is taxed at not more than one-half the rate on ordinary income. There is also the possibility that a higher tax basis will be obtained if one of the shareholders should die. (The new basis would be the market value of the shares at the time of his death.)

¹ See the section on tax disadvantages (page 9) for certain limitations and disadvantages in retaining income in the corporation as accumulated earnings.

Comparison of Income Tax for Married Farmer Under Individual Proprietorship and Under Corporate Organization

Net earnings before salary	Distribution	Amount of tax
Under individual proprietorship		
\$ 5,000	all to individual	\$660
15,000	all to individual	2,960
20,000	all to individual	4,532
40,000	all to individual	13,354
60,000	all to individual	24,176
Under corporate organization		
\$ 5,000	\$ 5,000 salary to individual none retained in corporation	\$660 } none } \$660
15,000	\$15,000 salary to individual none retained in corporation	2,960 } none } 2,960
20,000	\$17,000 salary to individual 3,000 retained in corporation	3,560 } 900 } 4,460
40,000	\$17,000 salary to individual 23,000 retained in corporation	3,560 } 6,900 } 10,460
60,000	\$35,000 salary to individual 25,000 retained in corporation	10,800 } 7,500 } 18,300

A married person operating his own farm business and receiving a taxable income larger than \$16,000 may incorporate with substantial income tax saving by retaining part of the income in the corporation. (The tax rate for a single person goes over 30 percent at \$8,000 and 53 percent at \$18,000. Thus for a single person incorporation may reduce taxes if his taxable income is greater than \$8,000.) Also when a farm owner is in a high tax bracket because of substantial outside income, incorporation of the farm business may mean a tax saving.

It should be noted that when all of the income from an incorporated farm business is paid out as salaries to the owners, income tax liability *is not increased* by incorporation.

Means of improving credit status and pooling capital

Corporate organization, by bringing capital together under a single, unified control, may attract even more capital and improve the credit status of the business.

There are several reasons for this increased financial strength. First, a corporation continues to function even though an owner (shareholder) should leave. There is continuity of operation. Second, lenders and investors prefer to deal with the unified and assumedly able management which they expect to find in a corporation. Third, the credit of a corporation is not impaired by the individual liabilities of a shareholder.

In addition, a corporation allows a pooling of assets from various sources. People who for some reason cannot farm actively (urban relatives and friends of a farm family, or retired farmers) can still invest in the farm business. And two or more farm families who individually might not have enough capital to farm efficiently might use the assets they do have to best advantage by pooling them in a farm corporation.

What Are the Disadvantages of Incorporation?

Initial cost of incorporation

A corporation must pay certain fees and taxes which are not required for other types of business organizations.

The Secretary of State charges fees for filing corporate statements or reports in his office. The fee is \$5 for filing an application to reserve a corporate name, \$20 for filing the Articles of Incorporation, and \$1 for filing most other statements and reports.

The following is an example of the total initial cost (not including professional fees) of incorporating a typical 200-acre Illinois cash-grain farm.

The business:

Shares of stock issued.....	1,080
Value per share.....	\$100
Number of shares authorized.....	2,000
Total proposed capitalization.....	\$108,000
Date of incorporation.....	September 15

The fees:¹

Initial filing fees.....	\$ 25.00
Initial license fee.....	54.00
Initial franchise tax.....	45.00
Federal stamp tax.....	118.80
Total.....	\$242.80

Tax disadvantages

After incorporation, an annual franchise tax of 50 cents per \$1,000 of stated capital and paid-in surplus² must be paid in the month of July.

When there is an increase in stated capital or in paid-in surplus, a report of the increase must be filed (filing fee \$20) and an additional license fee and franchise tax, computed on the same basis as the initial fees, must be paid on the capital increase.

Corporate income is subject to corporation income taxes, and when distributed as dividends, to individual income taxes. Paying out most of the earnings as salaries or accumulating them in the corporation can eliminate much or all of this disadvantage. Care must be taken if cash accumulations exceed \$60,000. Above that figure, accumulations must be reasonably related to the business or be subjected to an extra tax of 27½ percent to 38½ percent.

There is a federal stamp tax on the issuance of shares and, with few exceptions, all sales, agreements to sell, or gift transfers of shares of the corporation, after their original issue, are subject to a federal stamp transfer tax.

A farm corporation is also subject to an annual capital stock tax. The amount of this tax is computed by deducting from the total value of the corporation the value of property which is assessed locally plus

¹ For method of computation see pages 17 and 18.

² "Paid-in surplus," now often referred to as "additional paid-in capital," is the amount paid for shares in excess of their stated value.

debts for current expenses. The difference is called capital stock value and is assessed on the same basis as other personal property. Since the assets of a farm corporation usually are in the form of tangible items such as land, buildings, and equipment, which are assessed locally, the capital stock tax should be small.

Formality of organization and operation

The law is quite specific about procedures required in operating a corporation. The management must be handled by shareholders, directors, and officers, each performing the duties and exercising the powers granted him by the law.

(A non-incorporated business, on the other hand, is organized along whatever lines the owners find most suitable. Its management is guided largely by reason and custom.)

Articles of Incorporation must be completed in detail and properly filed and organization fees paid. Shareholders must meet to elect directors and adopt by-laws defining their powers and duties. Directors are required to meet and elect officers, resolve corporate policies and practices, and begin business.

Reports must be filed with the state when the corporation does certain things such as increasing its capitalization or issuing additional shares. An annual report of business must also be filed.

A corporation is required to keep correct and complete books and records of account, minutes of the meetings of its shareholders and board of directors, and a record of its shareholders, their addresses, and the number and class of shares held by each.

The sales of shares in a farm corporation usually are exempt from registration under the securities laws, but the possibility of coming under them should be carefully checked. In some cases, a farm corporation may have to fulfill registration requirements of the Illinois Securities Law. The Federal Securities Act requires registration of securities when an issue over \$300,000 is offered to the public.

How Is the Farm Business Incorporated?

Any three or more persons 21 years or older who agree to buy one or more shares (or trade them for capital assets) in the proposed corporation may incorporate a business.

At least \$1,000 must be paid into the business before it can begin operation as a corporation.

The usual steps in forming a corporation are:

- a) The incorporators (1) file an application to reserve a cor-

porate name, (2) make a preincorporation agreement, (3) draft, sign, verify, and file the Articles of Incorporation and pay initial fees.

b) Capital is turned over to the corporation and stock issued in return. In some cases bonds may be issued in addition to shares of stock (see f), page 20).

c) The shareholders meet to elect directors.

d) The directors meet, elect officers, adopt by-laws (unless the Articles of Incorporation give this power to the shareholders), and begin business in the name of the corporation.

Forms to be filed with the State may be obtained from the Secretary of State's office. See pages 32 through 44 for examples of forms and agreements.

The following sections discuss in detail the incorporation procedure and its purpose.

The preincorporation (shareholders) agreement¹

This agreement is not legally necessary but highly desirable. It serves as a guide for the incorporators while the corporation is still in its formative stages and unable to act for itself. It may also be used to restrict the rights of shareholders in the purchase and transfer of shares, and to restrict the powers and duties of directors, officers, and shareholders in the operation of the business.

A preincorporation agreement for a farm corporation will usually include the following:

a) **Agreement to incorporate.** The incorporators agree that the corporation shall be organized, that it shall issue a given kind and number of shares, and that they agree to buy these shares in stated amounts. One or more of the prospective shareholders agree to perform the acts necessary to bring the corporation into legal existence.

b) **Naming of employees, directors, officers, and their salaries.** The agreement may name the shareholders who will work for the corporation, their duties, and their salaries. Since in a farm corporation the shareholders themselves usually will act as directors and officers, the agreement should state which position each will occupy. To be legally enforceable, such a provision must be carefully worded so it will not encroach upon the rights of shareholders to elect directors, and of directors to elect officers. For example, if Robert Wilson is to be chairman of the board of directors and president of Wilshire

¹ A sample preincorporation agreement for a farm corporation appears on pages 32 through 35.

Farms, Inc., the agreement would state that Mr. Robert Wilson will perform certain duties as an employee of the corporation at a specified salary and, if he is elected president and chairman of the board of directors, will serve as such, and perform the duties of those offices without additional compensation. In this way, when the corporation adopts the contract, it has to pay Robert Wilson the agreed salary, making it a practical necessity that he be elected as president and chairman of the board of directors of Wilshire Farms, Inc.

Decisions of directors and officers which the incorporators feel should require unanimous approval may be included in this agreement and later written into the Articles of Incorporation and by-laws. Regulation of shareholders' votes and quorum requirements must be made a part of the by-laws, but also may be included in this agreement for later adoption as by-laws.

c) Restriction on stock transfers. Restrictions may be used to keep corporate control and assets in the hands of the original owners or selected successors. They may provide that if any shareholder resigns from the employ of the corporation, attempts to sell, pledge, or otherwise encumber his stock, becomes ill or incapacitated for a certain period of time, or dies, the corporation or the other shareholders, in proportion to their holdings, shall have the right to purchase his shares. If this option to buy is to be a permanent restriction, it should also be included in the Articles of Incorporation.

These restrictions, however, must not cause an unreasonable restraint on the general right to transfer ownership of property. They cannot, for instance, require that a shareholder obtain the consent of an officer, director, or the shareholders of the corporation before he can sell his shares. The shareholder may be required to offer his shares for sale to the corporation or its shareholders before he can offer them for sale to an outsider.

An agreement for life insurance on the lives of the individual shareholders may be used to supplement the option to buy the shares of a deceased shareholder. The surviving shareholders, the corporation, or an independent trustee is made beneficiary of the policy. The proceeds provide funds with which to pay the heirs, executor, or administrator of the deceased shareholder for the value of his shares. (See page 34.)

d) Evaluation of shares. If the method of valuing the shares is included in the preincorporation agreement, it will reduce the possibility of later disagreement when shares are transferred to a different owner. One or more of the following methods may be used.

(1) *Book value method.* The value of shares is equal to the value

of the corporate assets as shown on the corporate books. This method is often used because it is simple to compute. Difficulty may arise, however, when determining the value of intangibles such as good will since book value seldom indicates the actual value of this kind of asset to the business. A provision for separate valuation of intangibles can be inserted to overcome this problem.

Another difficulty may occur if book value does not reflect market value. For example, market value of assets may be quite different from book value in times of inflation or when there is a temporary shortage of certain items. Any attempt to correct for such variations becomes complicated.

(2) *Mutual agreement among the shareholders.* By this method, either a majority or all of the shareholders fix the value of the shares. Some family-type corporations find it best to fix the value annually by majority vote, using this set value for all transfers during the next year.

(3) *Separate outside appraisal of the corporate assets.* This is the best alternative for the other methods. Since it is the most expensive, one of the other methods should be used first. The agreement should cover the procedure for selecting appraisers. A statement might also be included making the appraisal binding on all parties.

e) **Term.** The preincorporation agreement may be for a temporary period or for a more permanent term. Usually the term is a set number of years (such as 5 or 10 years) and thereafter from year to year, thus continuing the agreement in force even after the corporation is organized. A clause can be inserted permitting the termination of this agreement by a majority (in number or interest) of the shareholders.

The Articles of Incorporation

The Articles of Incorporation are the nucleus of the powers and limitations of the corporation and its shareholders. They should provide for possible future changes in size and type of farming operation since amendments must be filed and additional fees paid if the Articles prove to be insufficient.

The Articles of Incorporation are filed on a standard form provided by the State. This form includes the sections listed below.

a) **Introduction.** The complete names and addresses of the incorporators (minimum of three) must be listed. It is not necessary to include all of the prospective shareholders and in no case should more than five be listed. If there are less than three owners, a nominal



The signing of the Articles of Incorporation is an important step in the life of Tiller Farms, Inc. When they are stamped "filed" by the Secretary of State, the corporation begins its official existence. (Fig. 3)

shareholder may be selected by the owners to serve as an incorporator. This incorporator must agree to purchase at least one share of stock in the corporation.

b) Name of the corporation. It may be any name desired so long as it is not the same as, or deceptively similar to, the name of any other corporation operating in the state. In addition, the name must contain the word "corporation," "company," "incorporated," or "limited," or must end with an abbreviation of one of them.

c) Registered office and agent. The address of the initial registered office, including the county in which it is located and the name of the initial registered agent at that address, must be stated. The initial registered office need not be the principal place of business of the corporation and the initial registered agent need not be one of the shareholders. The purpose of this information is to tell the state where it may contact the corporation. Official notices and summonses will be sent to this name and address. Ordinarily the farm address is the initial registered office and a shareholder who lives there is the initial registered agent.

If the corporation desires at a later time to change its registered office or registered agent, it must file a statement of the change with the Secretary of State.

d) **Duration.** The duration of a farm corporation usually is "perpetual." This means that the corporation will continue as a legal entity until it is formally dissolved by operation of law.

e) **Purposes.** A corporation has only the power to carry out the general purposes provided by law plus those stated in this article. This section should be brief and comprehensive, making the purposes very broad to cover any possible sideline business the corporation may enter.

The general purpose will be to engage in the farming business. If the business includes dealerships or distribution rights, these purposes can be specifically included. In addition, a "catch-all" clause can authorize all business necessary or reasonably related to the primary business purpose of farming.

Although the "purpose" article has been the subject of much controversy in the past, it is now usually liberally interpreted by the courts and raises no problems if carefully drafted.

f) **Shares of stock.** The class, number, and value of authorized shares of stock as well as any preferences or restrictions with respect to the classes must be included.

Shares may be *par* or *no par* value and *common* or *preferred* class. *Par* shares have a predetermined and stated face value. *No par* shares have no value stated on their face. They represent a proportionate interest in the business and the board of directors (the incorporators until the corporation is formed) sets the value at which they are issued.

Shares classed as *common* shares can pay dividends only when the directors declare a dividend out of current or past earnings as long as the corporation remains solvent. The dividend must be the same for each share.

Holders of *preferred* shares, on the other hand, are entitled to receive dividends (up to a fixed amount) according to the terms of the contract. Usually such dividends must be paid before any dividends may be paid on common shares or earnings be accumulated in the corporation. *No par common* shares are usually the most satisfactory class to authorize in a farm corporation. They allow greater flexibility of value and a simple financial structure.

Usually there is no advantage in complicating the structure of a farm corporation by issuing more than one class of shares. In some

situations, however, it may be desirable to authorize *preferred* shares in addition to *common* shares. *Preferred* shares may be especially useful when one or more shareholders (for example a landlord or a retired parent) contributes considerable capital to the business but does not take an active part in its operation as an officer or employee.

When the classes of shares have been determined, the next step is to decide how many shares to authorize and what the value per share will be. Since Illinois does not tax the number of shares authorized, it is a good policy to authorize twice as many shares as the corporation intends to issue. This allows for later expansion or an increase in the number of shareholders without having to amend the Articles of Incorporation. The number of shares in the original issue should approximate the value of the business assets divided by the value per share.

The value per share should be set low enough that there will be a sufficient number of shares to allow small portions of the capital to be transferred easily. The manner in which the federal stamp tax is calculated, however, makes it impractical to issue an excessive number of shares.

Most farm corporations should issue *no par* shares at a price fixed at \$10 to \$100 each. To take full advantage of the federal stamp tax provisions and still divide the assets adequately, it is suggested that shares be sold for \$20¹ each if the total corporate assets do not exceed \$10,000, and for \$100 each if they are over this amount.

g) Number of directors. Since the shareholders will also be the directors in a farm corporation, the number of directors will usually be determined by the number of shareholders owning the business. The law requires that a minimum of three directors be elected and ordinarily it is impractical to elect more than nine.

h) Estimate of assets and income. The Articles of Incorporation must include an estimate of the property to be owned by the corporation for the following year and an estimate of the property to be owned within the state for the same period. In addition they must give an estimate of the gross amount of business which will be transacted and the amount to be transacted in Illinois. Unless there is out-of-state property or out-of-state business, these estimates are the same. This information is used to determine the amount of the franchise tax.

¹ If low-value shares are to be issued (\$1-\$10), the stamp transfer tax is less when par value shares are used.

i) **Oath and acknowledgment.** When the Articles of Incorporation are completed, any three incorporators declare by signing them that the statements made therein are true. The acknowledgment of signatures is then notarized.

Two completed copies of the Articles must be sent to the Secretary of State along with the incorporation fees. If they are in proper order, the Secretary files one copy in his office and returns the other to the incorporators along with a Certificate of Incorporation.

When the Secretary of State stamps "filed" on the Articles, the corporation becomes a legal entity of its own and is in official existence.

The Certificate and the Articles of Incorporation that are returned to the incorporators must be filed for record within 15 days in the office of the Recorder of Deeds of the county in which the registered office of the corporation is located.

An example of completed Articles of Incorporation for a farm business is on pages 35 through 37.

Initial fees and federal stamp tax

The initial fees are sent with the Articles of Incorporation to the Secretary of State. They are computed on the basis of the information in the Articles and are listed below.

a) A filing fee of \$20, charged for filing the Articles and issuing the Certificate of Incorporation.

b) The initial license fee of 50 cents per \$1,000 of stated capital and paid-in surplus that the corporation proposes to exchange for shares without further report.

c) The initial franchise tax, determined in the same way as the initial license fee except that it is assessed on a monthly basis. The tax is computed using July 1 as the beginning of the year. The monthly rate is one-twelfth of 50 cents per \$1,000 of stated capital and paid-in surplus, or about 4.2 cents per month per \$1,000.

The minimum initial franchise tax payable for a 12-month period is \$10 regardless of the amount of stated capital and paid-in surplus. This minimum varies proportionately with the number of months involved and is less than \$10 for a period of less than 12 months.

A different method of computation must be used if out-of-state property is owned by the corporation or if any business is transacted out of the state.

d) A federal stamp tax is paid on the original issuance of shares. On *no par* stock the tax is computed on the basis of the actual

value of each stock certificate. This value is the value of each share times the number of shares represented by the certificate. If the actual value per share is \$100 or more, the rate is 11 cents on each \$100 or fraction thereof. On shares valued at less than \$100, the rate is 3 cents on each \$20 or fraction thereof. For example, the tax on a certificate representing 10 *no par* shares valued at \$105 per share (total value of the certificate — \$1,250) is \$1.21 (11 cents for each \$100 of value plus 11 cents for the \$50 fraction). There are similar rates for *par* value shares.

The tax is paid by purchasing the proper number of tax stamps at a post office. These stamps must be affixed to the stock books and cancelled when the shares are issued.

There is also a federal stamp tax on the transfer of shares after they are issued.

The by-laws

After the Articles of Incorporation are drafted and filed, the by-laws are considered. The Articles are more permanent provisions than the by-laws, and are placed on public file, thereby giving people outside the corporation notice of them. The by-laws are regulations of a less permanent nature and are not on file in a public office. However, shareholders are presumed to know their contents and are bound by them. By-laws provide general guides under which the business will be conducted, supplemented by resolutions of the board of directors and daily management decisions of the officers.

The Business Corporation Act provides that by-laws may contain any provision for the regulation and management of the affairs of the corporation not inconsistent with law or the Articles of Incorporation. The provisions listed below are generally included in the by-laws.

a) Name, location, seal, and fiscal year. The name of the corporation and the location of its offices and places of business (often allowing the directors to designate other places of business) should be in the by-laws.

The seal of the corporation is described, as well as authorization for its use and custody.

The fiscal year of the corporation, which should coincide with the natural business year, is usually included.

b) Shareholders' meetings. Provision should be made both for an annual meeting and for special meetings of the shareholders. The annual meeting should follow the end of the corporation's fiscal year when financial records for that year are available. Special meetings in

a farm corporation will ordinarily be called by the president or at the request of two or more directors.

The law requires notice of not less than 10 or more than 40 days for annual and special shareholders' meetings. A period within this range usually is stated in the by-laws. A statement allowing shareholders to waive notice should be included.

The law requires that persons representing a majority of shares be at a shareholder's meeting before any business can be transacted. The by-laws cannot reduce this requirement but can provide that a higher percentage than a majority is necessary to legally act.

c) Directors and their meetings. By-laws should provide for the number, qualifications, and election of directors. Since the farm corporation normally will elect all shareholders as directors, it can be required that a director must be a shareholder and that his office becomes vacant if he ceases to be a shareholder. The by-laws may also state that the first board of directors shall be elected at the organization meeting of the incorporators and that thereafter the board shall be elected at each annual meeting.

The annual meeting of directors should be held immediately following the meeting of the shareholders and is primarily to elect officers. Provision for other regular meetings and special meetings of the directors and the notice required should be included. The president can be required to call a special meeting at the request of one-third or more of the directors.

The Illinois Corporation Law states that a majority of the directors constitutes a quorum and that a vote of a majority of the quorum is sufficient to take legal action. However, the by-laws may require a two-thirds vote or a unanimous vote on certain management and policy decisions of a farm corporation.

It may be wise to include a by-law stating that directors shall not engage in business transactions that compete with the corporation or which are against its best interests.

d) Officers and their duties. By-laws should name corporate offices and outline the functions of those holding such offices. The law requires that officers include a president, one or more vice-presidents, a secretary, and a treasurer. However, any two or more offices may be held by the same person except the offices of president and secretary.

For the farm corporation, it is reasonable to require that officers also be directors of the corporation. A short, comprehensive statement defining their general duties is ordinarily sufficient. Specific details will be outlined by the directors in the form of resolutions.

The by-laws should state that the directors may appoint a person to serve out the unexpired term of any office becoming vacant.

A statement that salaries will be fixed from time to time by the board of directors may be added. However, if a preincorporation agreement regulates this, the by-laws should refer to that agreement.

e) Capital stock. If the farm corporation has only one class of stock, these by-law provisions can be simple. The law requires that a certificate of stock be signed by the president or a vice-president and the secretary or an assistant secretary. The by-laws should designate which officers are authorized to sign the stock certificates.

The by-laws should also refer to any stock transfer restrictions and valuation methods which may be in the preincorporation agreement if they are to be retained as a part of the corporate structure.

f) Special corporate acts. The by-laws may contain special powers of the corporation relating to negotiable notes, deeds, contracts, bonds, mortgages, etc.

Financing a corporation is not limited to using shares of stock. Bonds or similar paper (debentures for example) may be used to furnish part of the capital or to give certain family members an interest in the farm corporation. Bonds have at least two income tax advantages over shares of stock. The corporation may deduct interest on bonds, while it may not deduct dividends paid on stock. Corporation earnings can be transferred to bond holders by redeeming the bonds, which raises fewer tax questions than redeeming stock.

The use of bonds also has the advantage of separating financial interests from corporation management. Bondholders have no vote at shareholders' meetings. This may be important when obtaining capital from outside sources or when giving an interest to a family member who is not active in the farm business.

However, despite these advantages, there will be little need and even less desire to use bonds or debentures in close family farm corporations. Earnings can be siphoned out of the corporation through salaries and bonuses. Bonds are not needed to do this. Members of the family who furnish capital will want shares of stock and not bonds because they expect the shares to grow in value and they usually like to have a voice in the corporate management.

g) Miscellaneous provisions. Several items may be included such as (1) authority for directors to open bank accounts, (2) liability insurance on the officers and directors, and (3) the manner in which notices of meetings shall be given and how they may be waived. Any other matters peculiar to the particular corporation should be included here.

h) **Amendment of by-laws.** Since the directors of the farm corporation usually are also the shareholders, there is no advantage in requiring a shareholders' vote to amend the by-laws. Therefore power to amend them at any time should be given to the board of directors.

An example of by-laws for a farm corporation is found on pages 37 to 42.

Restrictions on stock transfer

Control over the transfer of corporate shares can regulate the ownership of a corporation and affect the continuity of its management and business operations. Shareholders of a farm corporation therefore usually wish to place certain restrictions on the transfer of the corporation's shares.

Desired stock transfer restrictions should be first stated in the preincorporation agreement. Then, so that they will apply after the corporation is organized, they should be placed in the by-laws or in the Articles of Incorporation.

When the restrictions on its transfer are displayed on the face of the stock certificate, prospective buyers are duly notified of their nature and extent. If a transfer is not made in accordance with these restrictions it is invalid and may be set aside.

How Is the Incorporated Business Operated?

Management — division of authority

The farm corporation has the same operating decisions to make as does the farm partnership, the landlord and tenant, or the single owner-operator. A corporate management system, however, handles such problems in a slightly different way than they would be handled in the other types of business organizations.

There are three different management groups in a corporation. They are the shareholders, the directors, and the officers. Each group has the power to authorize certain things and perform certain acts in the operation of the corporation. Since the shareholders are usually also the directors and the officers in a farm corporation, the same people will be performing the functions of all three groups. However, it is important to know the separate functions of each group so that each person will act in his proper capacity.

The three management groups, in the order of their ultimate controlling power, are discussed below.

a) Shareholders.

(1) *Rights and duties.* Shareholders have the right to vote on

questions before them, casting one vote on each question for each share of stock which they own. They have the right to direct the affairs of the corporation through directors elected by them.

In the election of directors, each shareholder is entitled to votes equal to the number of his shares multiplied by the number of directors to be elected. He may cast all his votes for one director or distribute them among any number of them as he sees fit. Shareholders also have the sole power to remove directors by a notice and hearing if there is sufficient cause to do so.

Shareholders transact all of their business at annual and special meetings. However, any action which may be taken there also may be taken without such meetings if all the shareholders give their written consent (see page 44 for an example of a consent form). Action by consent would be expected in a farm corporation where the shareholders are well acquainted and work closely in the business, or if one or more shareholders live a considerable distance from the farm business.

The power to make, alter, amend, or repeal the by-laws of the corporation may be given to the shareholders in the Articles of Incorporation. Otherwise the directors have this power. Shareholders may amend the Articles of Incorporation if a resolution of amendment, adopted by the board of directors, is submitted to them and passed by a two-thirds vote.

Meetings of shareholders must be in accordance with the by-laws. Unless the law, the Articles of Incorporation, or the by-laws require a greater vote to pass on a particular question, a majority vote of shares present is sufficient to approve any resolution which is properly before the shareholders.

A shareholder has the right to examine the books and records of the corporation for a "proper purpose." Almost any reasonable purpose is considered by law to be a "proper purpose." The by-laws may state that the shareholders may examine the books at any time if it is in connection with the corporation business.

A shareholder has the right to sue in the name of the corporation to protect its interests. To do so, however, the shareholder must first have the board of directors refuse his demand to take legal action.

The shareholders of a corporation, by giving their unanimous written consent, may elect to voluntarily dissolve the corporation and wind up its affairs. When the president or vice-president receives such written consent, he must carry out the dissolution according to the law.



Ultimate control of a corporation rests in the shareholders, who have the right to vote on each question put before them. Each shareholder has one vote for each share of stock he owns on any such question. (Fig. 4)

(2) *Liabilities.* Since a corporation is a separate entity from its shareholders, the general rule is that a claim against the corporation is not a liability of the shareholders. If a shareholder has agreed with a creditor to personally bind himself for a corporate debt, however, his personal assets are subject to the claim. Also, a person who has agreed to buy shares of the corporation for a certain price may be held liable for the unpaid balance of the purchase price.

A shareholder is not liable for injuries committed by agents or employees of the corporation unless he was personally responsible for or participated in the wrongful act.

b) Directors.

(1) *Number, term, qualifications.* A director is considered an officer of the corporation and a "fiduciary" to the shareholders (he occupies a position of trust and confidence). He is entrusted with the management of the business for the common benefit of each and every shareholder.

The number of directors to be elected at the first meeting of the shareholders is fixed by the Articles of Incorporation and remains the

same at subsequent elections unless a different number is fixed by the by-laws. All directors are elected at each annual meeting of the shareholders and hold office for the following year.

If a vacancy occurs on the board of directors because of death, resignation, or other cause, a meeting of the shareholders must be held to fill the vacancy. Until the vacancy is filled, the remaining directors act as the full board. A director is free to resign at will, and his resignation is valid even if it is not accepted by the shareholders.

A director should not engage in business transactions which conflict with his duties as a director of the corporation. If it is fair to the corporation however, he may enter into outside transactions for his own personal benefit, even to the extent of going into a business of the same nature as that of the corporation.

(2) *Powers and duties — meetings.* The Business Corporation Act states that the business and affairs of a corporation shall be managed by a board of directors. The Illinois courts have interpreted this to mean that an individual director has no authority as such, and that assent of a majority of the directors will not bind the corporation unless they act at a meeting as a "board."

A directors' meeting need not be formal or regularly called. If all directors are present, they may act as a board and bind the corporation. However, when advance notice of the meeting has been given in accordance with the by-laws, and a quorum is present at the meeting, a majority vote of the number present is sufficient to bind the corporation.

To illustrate, the directors of a farm corporation having three directors may transact business at a meeting without giving advance notice if all three are present. If all the directors are given proper notice, any two of them can act as a board, or if only the absent director had advance notice, the two directors present at the meeting can transact business. However, both directors would have to vote together on issues because one vote would constitute only one-half of the total vote present and not a majority.

The law does not say how often the directors must meet. They have a duty to meet often enough to know what the officers, agents, and fellow directors are doing and to keep the business in a sound condition to the best of their ability. In a farm corporation, the directors will be working together as officers, agents, and employees in the business, and the frequency of meetings and interest in the business should not present serious problems.

While the procedure to follow at meetings of directors is not defined by law, it is always best to take official minutes when the board

is transacting business. Minutes provide an excellent record of past decisions for the directors' use and give protection to persons dealing with the corporation. For example, if the board of directors decides that the president should purchase a tract of land or borrow money, a record of this in the official minutes will satisfy outside parties that the president has proper authority to do so. Except for keeping formal minutes of business decisions, the meetings may be conducted in an informal manner.

The directors are not entitled to a salary unless the by-laws provide for it. There seems to be no good reason to provide compensation for the directors of a farm corporation since they are also the shareholders who gain from corporate profits and, in addition, may receive salaries as officers or other employees of the corporation.

The directors may elect to voluntarily dissolve the corporation, and if their resolution is adopted by a two-thirds vote of the shareholders, the officers must carry out the dissolution.

(3) *Liabilities.* In general, directors are not personally liable to the corporation to any greater extent than are the shareholders. However, they may be liable under special circumstances. A director may be held liable to the corporation if his negligence in managing its affairs causes loss to the corporation (if, for example, he fails to perform a legal duty such as filing required reports with the state or allows another director to misappropriate corporate funds). A director is, of course, also liable to the corporation if he commits an intentional wrong, such as a fraud on the corporation. He may also be liable if he is guilty of divided loyalty or any other act in which he uses his office as a means of personal gain at the expense of the corporation.

Usually, a director is not liable for claims against the corporation unless he agreed to become personally bound. If a director signs a promissory note on behalf of the corporation, he will not be personally liable if he was authorized by a resolution of the board of directors to bind the corporation. However, if the director leads the lender to believe that he intends to become personally bound, or if he exceeds his authority in executing the note in the corporate name, he may be liable along with the corporation. Often a creditor will require that the directors bind themselves as well as the corporation before they will extend credit.

In summary, a director is personally liable for debts of the corporation:

- When he agrees to become personally bound.
- When he falsely leads the creditor to believe that he intends to be personally liable.

— When he attempts to bind the corporation in excess of his authority.

— When he misrepresents the financial condition of the corporation to persuade a third person to become its creditor.

— When he commits a wrongful act (or fails to act when he should), causing physical or financial harm to an innocent person.

— When he assents to a declaration of improper dividends.

c) Officers.

(1) *Qualifications, election, term.* Officers are elected annually by the board of directors or for a term stated in the by-laws. They may be removed by the board of directors if the board feels such action will serve the best interests of the corporation. Any special qualifications for an office should be in the by-laws. As pointed out earlier, officers in a farm corporation would usually be shareholders and directors.

In the operation of the business, the rules on conflicts of interest that apply to directors also apply to officers.

(2) *Powers and duties.* The officers of a corporation are employed as its agents. The office itself confers no power to bind the corporation or to control its property. This power comes directly from the board of directors or is implied through custom and practice.

The president may sign contracts (including promissory notes) and perform other duties ordinarily part of the operation of the corporation's business. He must have authority from the board of directors to enter into any unusual contracts and the by-laws may require that he obtain approval of the board before he does certain other acts.

The vice-president, unless the by-laws state otherwise, may act in any capacity where the president might act if the president is absent or where those powers and duties have been delegated to him.

The treasurer is in charge of receiving and paying out money in the operation of the business. The secretary is responsible for keeping minutes of meetings and for maintaining adequate records of business transactions. Both offices are frequently held by one person.

(3) *Liabilities.* Officers are generally no more liable to the corporation and to creditors for claims against the corporation than are directors and shareholders. But they may be liable for fraud or other misconduct, both to the corporation and to creditors.

Filing of reports

a) *Annual report.* A corporation is required to send an annual report to the Secretary of State for filing between January 15 and February 28 of each year. Failure to file this annual report may lead to an involuntary dissolution of the corporation by court action.



James Tiller, secretary, mails the required annual report of Tiller Farms, Inc. to the Secretary of State in Springfield. The report contains a résumé of the corporation's financial status. (Fig. 5)

The annual report contains information used to determine the annual franchise tax, which is collected in July. The report includes a statement of the amount of stated capital and paid-in surplus and any change since the year before, the value of all property owned by the corporation, how much of it is owned within the state, and the gross amount of business transacted by the corporation in the last calendar year.

b) **Capital stock assessment.** The capital stock assessment report must also be completed annually and sent to the State Department of Revenue. The assessment form is furnished by the Department and requests the value of the corporation as a whole, the value of tangible property, and the value of intangible property. The capital stock value is then listed on the assessment rolls in the county where the corporation does business, and the tax is collected as a part of local property taxes.

The following reports are necessary only when there is a change in the business or dissolution of the corporation is desired.

c) **Statement of change of registered office or agent.** If a corporation changes its registered office, its registered agent, or both, it must file a statement to that effect with the Secretary of State.

d) **Report of issuance of shares and increase of stated capital and paid-in surplus.** A corporation must file a special report within sixty days after the following: The issuance of any shares not previously reported to the Secretary of State as having been issued; an increase in the amount of its stated capital, paid-in surplus, or both without the issuance of shares; or an exchange or reclassification of its shares which results in an increase in the amount of its stated capital, paid-in surplus, or both. The filing fee is \$1.

e) **Articles of Amendment.** If a corporation wants to change its Articles of Incorporation, it must file Articles of Amendment stating the changes along with certain other information. The Secretary of State files the Articles of Amendment if they are correctly filled out and all fees and taxes are paid. He, in turn, issues a Certificate of Amendment, which must be recorded in the office of the Recorder of Deeds in the county in which the corporation is located. The state filing fee is \$20.

f) **Report of sale of shares.** In certain cases, persons selling corporation shares may have to register under state and federal securities laws. These laws may apply when a controlling shareholder¹ transfers shares and when large issues of shares are offered for general sale. Detailed requirements of who must register under the Illinois Securities Law can be obtained from the office of the Secretary of State, Springfield, Illinois.

Requirements for registration under the federal law can be obtained from the Securities and Exchange Commission, Washington, D. C.

g) **Other reports and statements** that may be required are:

- (1) Articles of merger or consolidation.
- (2) Statement of establishing series of shares.

¹ A controlling shareholder is any person (or group of persons acting together), who owns either 25 percent or more of the voting shares of the corporation where no person owns a greater percentage, or a number of shares sufficient to allow the owner to elect a majority of the board of directors. Before incorporation, the person who controls the activities of the issuer is the controlling person.

- (3) Statement of redemption.
- (4) Statement of reduction of stated capital.

Report forms may be obtained from the Secretary of State.

How Can the Corporation Be Dissolved?

A corporation receives its authority to carry on business directly from the state. Therefore, only the state can authorize a corporation to cease its existence. State law details the manner in which this is to be done.

Involuntary dissolution

An active corporation may be dissolved involuntarily upon complaint by the Attorney General and decree of a court of equity when:

- a) The corporation has failed to file its annual report, or has failed to pay its franchise tax at the proper time.
- b) The franchise of the corporation was obtained by fraud.
- c) The corporation has continued to exceed the authority given it in the Articles of Incorporation, or has continued to violate the criminal code after the Secretary of State has demanded that such conduct be stopped.
- d) The corporation fails to appoint a registered agent within 30 days after the position is vacated or fails to report within 30 days a change of registered office or registered agent.
- e) The corporation has failed to file a report of issuance of shares within 30 days after such report should be filed.
- f) The corporation, its officers, or directors have failed to answer, or have answered falsely, any statement requested by the Secretary of State within 30 days after it was mailed to them.
- g) A court of equity has liquidated the assets and business of a corporation and brought about an involuntary dissolution as the result of a suit by a shareholder or creditor of the corporation.

Voluntary dissolution

In a family-type corporation, dissolution by mutual consent is the most common. This method is therefore discussed in more detail.

If the corporation is to be dissolved by consent of the shareholders, only their unanimous written consent is needed. If the dissolution is to be made by act of the corporation, the board of directors must first adopt a resolution recommending that the corporation be dissolved and

directing that the question be submitted to a vote of the shareholders. Written notice must be given to the shareholders before an annual or special meeting that one of the purposes of the meeting is to consider the advisability of dissolution. If the owners of two-thirds of the shares then vote for the dissolution, it is authorized.

After the dissolution is authorized, duplicate statements of intent to dissolve must be completed for the corporation by its president or a vice-president. These documents must include the names and addresses of the corporation, its officers, and its directors; and either (1) the agreement to dissolve, signed by the shareholders, with a statement that such agreement is signed by all shareholders of the corporation, or (2) a copy of the resolution authorizing the dissolution plus a statement of the number of shares outstanding and the number of shares voted for and against the dissolution. This statement of intent to dissolve is then sent to the Secretary of State. When the Secretary of State files the statement of intent to dissolve, the corporation must cease to carry on business except for winding up its affairs. However, it still exists as a corporation.

The directors must mail notice of the intended dissolution to each known creditor. When all debts, liabilities, and obligations of the corporation are paid, or adequate provision has been made to pay them, and the remaining assets have been properly distributed, three completed copies of the Articles of Dissolution are filed with the Secretary of State. He issues a Certificate of Dissolution and returns it with a copy of the Articles of Dissolution which is to be filed for record with the county Recorder of Deeds. When the Certificate of Dissolution is issued, the corporation no longer exists.

(If, after filing the statement of intent to dissolve and before a Certificate of Dissolution has been issued, the shareholders decide not to dissolve the corporation, the law has certain procedures by which it may again be authorized to carry on its business.)

Dissolution before the corporation has begun business

A corporation which has not begun business or issued any shares of stock may be voluntarily dissolved by the incorporators within one year after its Certificate of Incorporation was issued.

Forms and filing requirements for completing such a dissolution are similar to those required for voluntary dissolution by the directors of an active corporation.

Liabilities after dissolution

The corporation, its directors, or its shareholders may sue or be sued for a period of two years after dissolution on any claim incurred while the corporation was in existence.

Directors of a corporation may be held personally liable after dissolution of the corporation if they failed to mail notice of the intended dissolution to a known creditor or if they carry on the corporation business, other than for winding up its affairs, after filing a statement of intent to dissolve if creditors are injured as a result.

Sample Corporate Forms and Agreements

For the purpose of illustration, the following sample agreements and forms have been drawn up for an imaginary farm family who wish to incorporate their farm enterprise.

This hypothetical family consists of Robert Tiller and his two sons, James and Paul. All three men are experienced farmers and are married.

They have all agreed to organize a corporation called Tiller Farms, Inc. Each member of the family will exchange property for shares in the corporation as listed below. Shares are to be sold for \$100 each.

1. Robert Tiller exchanges 160 acres of farmland, located in Champaign county and valued at \$300 per acre (total value—\$48,000), for 480 shares of stock.

2. James Tiller exchanges a complete line of farm equipment, valued at \$30,000, for 300 shares of stock.

3. Paul Tiller exchanges a beef breeding herd, valued at \$25,000, and \$5,000 cash for 300 shares of stock.

The total value of the business, when incorporated, is \$108,000. It is expected to return an annual gross income of \$45,000 with a net of \$20,000 before the payment of salaries.

The following forms and agreements made up for Tiller Farms, Inc. are *samples only*. They are not suggested for use in a specific farm business without adaptation by the parties actually involved in the business with the aid of an attorney.



Shares of stock, in a farm corporation, may be exchanged for farm assets such as land, machinery, and animals. Here Paul Tiller receives shares in Tiller Farms, Inc. in return for his contribution of a beef-breeding herd. (Fig. 6)

PREINCORPORATION AGREEMENT

This agreement is entered into this1st..... day ofMarch....., 19.....58....., betweenRobert Tiller.....,James Tiller....., andPaul Tiller....., who are to be the sole shareholders of the corporation, andTiller Farms, Inc....., which is to be formed pursuant to this agreement.

The shareholders agree that a corporation shall be organized, financed and capitalized, and its business conducted subject to the provisions of this agreement.

In consideration of the mutual covenants herein contained, the shareholders agree to the following provisions.

1. **Agreement to organize.** The shareholders shall cause the corporation to be organized under the laws of the state ofIllinois..... with an authorized capitalization of2,000..... shares ofcommon..... stock withno..... par value per share.Robert Tiller..... shall perform the necessary work involved in establishing the corporation, and the shareholders agree to cooperate fully.

2. **Subscription to shares.** The shareholders each hereby subscribe for and agree to purchase the following numbers of shares of the corporation and agree to transfer the following property to the corporation in consideration for said shares:

Shareholder	Shares	Consideration
.....Robert Tiller.....	480	240-acre farm (\$48,000 value)
.....James Tiller.....	300	Farm equipment (\$30,000 value)
.....Paul Tiller.....	300	Beef breeding herd (\$25,000 value) plus \$5,000 cash

3. **Employment and salaries.**Robert Tiller.....,James Tiller....., andPaul Tiller....., will each be employed full time by the corporation to perform the following duties at the following salaries:

a.Robert Tiller..... shall be employed to assist in the farm business at a salary equal to40..... percent of the corporation's net income but not to exceed\$8,000..... annually. If he is elected president by the board of directors, he will serve as such without additional compensation.

b.James Tiller..... shall be employed to assist in the farm business at a salary equal to25..... percent of the corporation's net income but not to exceed\$5,000..... annually. If he is elected as first vice-president and secretary by the board of directors, he will serve as such without additional compensation.

c.Paul Tiller..... shall be employed to assist in the farm business at a salary equal to25..... percent of the corporation's net income but not to exceed\$5,000..... annually. If he is elected as second vice-president and treasurer by the board of directors, he will serve as such without additional compensation.

4. **Voting of shares.** Each shareholder agrees so long as he shall remain a shareholder to vote his shares for the election of each of the other shareholders as a director of the corporation, and generally to so vote at shareholders' and directors' meetings of the corporation in accordance with the terms of this agreement.

5. **Restriction of stock transfers.**

a. In the event that any shareholder desires to sell his shares, ceases to be employed by the corporation, attempts to sell, pledge, or otherwise encumber his stock, becomes chronically ill or incapacitated so as to be unable to carry out his obligations to the corporation, becomes bankrupt, commits a willful and substantial breach of his fiduciary relationship with the corporation, or becomes mentally incompetent, all of the shares owned by such shareholder shall be offered for sale to the corporation and the other shareholders (the corporation having first priority, then the shareholders, in proportion to their share holdings, unless some other proportion is agreed upon in writing by the purchasers), and they are hereby given an option, for a period of90.... days from the date of the initial offer to sell, to purchase all or any of such shares at such value as is determined under Section7.... of this agreement. Payment for shares purchased pursuant to this agreement shall be made in cash or, at the option of the purchaser, as follows:20.... percent of the purchase price shall be paid in cash at the time the option is exercised; the remaining80.... percent shall be paid in12.... equal monthly installments to be represented by12.... joint promissory notes of the purchasers bearing interest at5.... percent per annum. Title to the shares shall pass to the purchaser only upon payment of all of the purchase price and such shares shall be held by the seller as security for completion of the payments. The purchaser shall have the sole right to vote the shares and to collect all dividends and other distributions thereon. The shares shall be transferred for record to the purchaser when the payments are completed.

b. Upon the death of any shareholder, the remaining shareholders shall, within60.... days after such death, purchase his shares at such value as determined under Section7.... of this agreement using the funds received pursuant to the life insurance provisions of Section6.... as purchase funds.

c. The restrictions in "a" and "b" above shall be specifically referred to upon the face of each certificate of stock issued byTiller Farms, Inc.....

6. **Life insurance for purchase of shares.** Each of the shareholders shall cause his life to be insured for the pro rata benefit of the other shareholders in proportion to their share holdings for the following amounts:¹

Name	Amount
.....Robert Tiller.....	.....\$48,000.....
.....James Tiller.....	.....30,000.....
.....Paul Tiller.....	.....30,000.....

To the extent that the proceeds of such insurance shall be paid to any shareholder, each agrees that he will purchase his pro rata share of the deceased's shares, as herein provided.

7. **Evaluation of shares.** For purposes of this agreement, the purchase price of the shares of the corporation shall be determined as follows:

If within 30 days after a shareholder's death, or after the happening of one of the contingencies in Section5a...., all of the shareholders or the continuing shareholders and the legal representatives of the selling shareholder (as the case may be), cannot agree on the value of the shares, such value shall be fixed by three appraisers selected as follows:

The continuing shareholders shall select one appraiser and the selling shareholder or his legal representatives (as the case may be) shall select another. The two appraisers thus selected shall select a third appraiser, and the decision of a majority of the three appraisers as to the valuation shall be final.

8. **Term.** This agreement shall continue in force for5.... years from date, and thereafter from year to year, until the shareholders shall vote not to renew.

9. **Modification or waiver.** No modification or waiver of any provision of this agreement shall be valid unless in writing signed by all the parties hereto. This agreement shall be binding upon the heirs, executors, legal representatives, next of kin, and assignees of the parties hereto.

In witness whereof, said parties hereunto affix their respective hands and seals this1st..... day ofMarch....., 19.....58.....

(Signed)Robert Tiller..... (Seal)R.R. #2, Urbana, Illinois.....

(Signed)James Tiller..... (Seal)R.R. #2, Urbana, Illinois.....

(Signed)Paul Tiller..... (Seal)R.R. #2, Urbana, Illinois.....

Confirmed and agreed to:

.....Tiller Farms, Inc.....

ByRobert Tiller.....
(President)

¹ Have the attorney check this carefully. There may be a tax advantage if the corporation applies and pays for the insurance.

.....March 15....., 19.....58.....

Attest:

.....James Tiller.....
(Secretary)

(Corporate Seal)

ARTICLES OF INCORPORATION

Form B

STATE OF ILLINOIS, }
.....Champaign.....COUNTY. } ss.

To, Secretary of State:

We, the undersigned,

Name	Number	Street	Address City	State
.....Robert Tiller.....	.....R.R. #2.....	.....Urbana.....	.....Illinois.....	
.....James Tiller.....	.....R.R. #2.....	.....Urbana.....	.....Illinois.....	
.....Paul Tiller.....	.....R.R. #2.....	.....Urbana.....	.....Illinois.....	

being natural persons of the age of twenty-one years or more and subscribers to the shares of the corporation to be organized pursuant hereto, for the purpose of forming a corporation under "The Business Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

Article One

The name of the corporation is:Tiller Farms, Inc.....

Article Two

The address of its initial registered office in the State of Illinois is: ..R.R. #2.. ofUrbana....., County ofChampaign..... and the name of its initial Registered Agent at said address is:Robert Tiller.....

Article Three

The duration of the corporation is:perpetual.....

Article Four

The purpose or purposes for which the corporation is organized are: *To engage in the farming business and all business necessary or reasonably related thereto, and in furtherance of the same but not in limitation thereof, the corporation in addition shall have the power to act as dealers or distributors of manufactured goods; to perform for hire custom services reasonably related to farming or*

performed with the use of equipment used in farming; to sell technical services related to the operation and management of a farming enterprise; to deal in, breed, raise, and sell all kinds of livestock and crops or other animals and plants; to develop, produce, and sell any other product resulting from working on, above, under, or in connection with the soil.

Article Five

PARAGRAPH 1: The aggregate number of shares which the corporation is authorized to issue is2,000....., divided intoone..... class. The designation of each class, the number of shares of each class, and the par value, if any, of the shares of each class, or a statement that the shares of any class are without par value, are as follows:

Class	Series (If any)	Number of Shares	Par value per share or statement that shares are without par value
common	none	2,000	shares are without par value

PARAGRAPH 2: The preferences, qualifications, restrictions and the special or relative rights in respect of the shares of each class are:

Each shareholder of record shall be entitled at all meetings of the corporation and in any other matters requiring a vote, to one vote for each share of stock standing in his name upon the books of the corporation.

The transfer of any share is subject to the following limitation: the registered holder of any share or shares must offer it for sale to the corporation and then to its shareholders, at a price as determined by agreement or by appraisal, before such share or shares may be offered for sale to another person. Any attempted transfer not made in strict compliance with these limitations is absolutely void and of no effect. No dividend shall be paid on any shares transferred, pledged, assigned, or encumbered in derogation of these limitations.¹

Article Six

The class and number of shares which the corporation proposes to issue without further report to the Secretary of State, and the consideration (expressed in dollars) to be received by the corporation therefor, are:

Class of shares	Number of shares	Total consideration to be received therefor:
common	1,080	\$108,000

Article Seven

The corporation will not commence business until at least \$1,000 has been received as consideration for the issuance of shares.

Article Eight

The number of directors to be elected at the first meeting of the shareholders is:three.....

¹ Note to reader: These restrictions need not be included here to be effective, if they are present in the preincorporation agreement. However, inclusion makes the restrictions more permanent since the Articles of Incorporation must then be amended to remove them.

Article Nine

PARAGRAPH 1: It is estimated that the value of all property to be owned by the corporation for the following year wherever located will be\$108,000.....

PARAGRAPH 2: It is estimated that the value of the property to be located within the State of Illinois during the following year will be\$108,000.....

PARAGRAPH 3: It is estimated that the gross amount of business which will be transacted by the corporation during the following year will be\$45,000.....

PARAGRAPH 4: It is estimated that the gross amount of business which will be transacted at or from places of business in the State of Illinois during the following year will be\$45,000.....

.....Robert Tiller.....	} Incorporators
.....James Tiller.....	
.....Paul Tiller.....	

BY-LAWS

ARTICLE I: Location, Seal, Fiscal Year

Section 1. Principal office: The principal office ofTiller Farms, Inc..... in the State ofIllinois..... shall be located in the County ofChampaign, R.R. # 2, Urbana, Illinois..... The corporation may have such other offices as the Board of Directors may designate or as the business of the corporation may require from time to time.

Section 2. Seal: The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the corporation, the state of incorporation, and the words "corporate seal."

Section 3. Fiscal year: The fiscal year of the corporation shall begin on thefirst..... day ofMarch..... and end thelast..... day ofFebruary..... in each year.

ARTICLE II: Shareholders

Section 1. Annual meeting: The annual meeting of the shareholders shall be held on the2nd Monday..... in the month ofMarch..... in each year, beginning with the year1958....., at the hour of7..... o'clockp.m....., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State ofIllinois...., such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the shareholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the shareholders as soon thereafter as is convenient.

Section 2. Special meetings: Special meetings of the shareholders, for any purpose or purposes may be called by the president at the request of two or more directors or at the request of the holders of not less than one-fifth of the outstanding shares of the corporation entitled to vote at the meeting.

Section 3. Place of meeting: The Board of Directors may designate any reasonable place as the place of meeting of any annual or special meeting of the shareholders. A waiver of notice signed by all shareholders entitled to vote

at a meeting may designate any place as the place for holding a shareholders' meeting. If no designation is made, the place of meeting shall be the registered office of the corporation.

Section 4. Notice of meeting: Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 30 days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

Section 5. Voting rights: The holders of record of the outstanding shares of the corporation entitled to vote or their representatives, duly authorized 30 days prior to the date of the annual meeting or special meeting of the shareholders, are entitled to one vote per share for each issue voted on at such meeting. The secretary of the corporation shall compile a list of such persons entitled to vote and make it available to the shareholders for inspection within 5 days of the meeting.

Section 6. Quorum: A majority of the outstanding shares of the corporation entitled to vote shall constitute a quorum at a meeting of shareholders. A majority of the shares voted for a resolution at a duly organized meeting is sufficient to adopt the resolution unless the law or the by-laws hereafter specifically provide to the contrary.

Section 7. Informal action by shareholders: Any action required to be taken at a meeting of the shareholders, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

ARTICLE III: Board of Directors

Section 1. General powers, number, tenure, qualifications: The business and affairs of the corporation shall be managed by a Board of Directors composed ofthree..... persons who are also shareholders in the corporation. Each director shall hold office until the next annual meeting of shareholders and until his successor shall have been elected and qualified pursuant to the terms of the reincorporation agreement, entered into the1st..... day of..... March.....,1958....., by the shareholders of the corporation, which agreement in its entirety is hereby made a part of these by-laws.

Section 2. Meetings: A regular meeting of the Board of Directors shall be held without other notice than this by-law immediately after, and at the same place as, the annual meeting of shareholders. The Board of Directors may provide, by resolution, the time and place for holding additional meetings without other notice than the resolution. Special meetings may be called by or at the request of the president or of any director. The president may fix any reasonably accessible place as the place for holding a special meeting.

Section 3. Notice: Notice of any special meeting shall be given at leasttwo days..... before the meeting in the same manner as that required for notice to shareholders. Any director may waive notice of any meeting and his attendance at a meeting shall constitute such waiver, except where his attendance is for the express purpose of objecting to the proceedings.

Section 4. Quorum and voting: A majority of directors shall constitute a quorum for the transaction of ordinary business at any meeting of the Board

of Directors and the act of the majority of the directors present at such a meeting shall be the act of the Board of Directors, except that a unanimous vote of all the directors is required for (a) incurring expenses or indebtedness in excess of\$2,000....., (b) releasing or compounding any debt to or claimed by the corporation, or (c) the issuance of additional shares either to existing shareholders or to another person.

Section 5. Vacancies: Any vacancy occurring in the Board of Directors must be filled by the shareholders by action authorized under Article II of these by-laws.

Section 6. Compensation: The directors shall serve on the Board of Directors without compensation, except that the Board of Directors may, by resolution, pay any expenses incurred by any director in attending meetings.

ARTICLE IV: Officers

Section 1. Number, election, and term: The officers of the corporation shall be chosen from the directors of the corporation and shall be a president, a first vice-president and secretary, and a second vice-president and treasurer, to be elected annually by the Board of Directors, pursuant to the terms of the preincorporation agreement hereinabove referred to, at their first meeting held after each annual meeting of the shareholders, or as soon thereafter as convenient. Each officer shall hold office until his successor shall have been duly elected and qualified, or until his death, removal, or resignation from such office.

Section 2. Removal: Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors by majority vote for the following reasons:

- a. Bankruptcy.
- b. Ceasing to be a shareholder.
- c. Permanent disability, rendering him unable to perform the duties of his office.
- d. Willful and substantial breach of his fiduciary relationship with the corporation.

Such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 3. Vacancies: A vacancy in any office for any reason may be filled by the Board of Directors for the unexpired portion of the term.

Section 4. President: The president shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall, in general, supervise and control all of the business and affairs of the corporation. He shall, when present, preside at all meetings of the shareholders and of the Board of Directors. He may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, certificates for shares of the corporation, deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these by-laws to some other officer or agent of the corporation, or shall be required by law to be otherwise signed or executed. He shall in general perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5. Vice-presidents: In the absence of the president or in the event of his death, inability, or refusal to act, the first vice-president shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice-president may

sign, with the secretary (if they are different persons), certificates for shares of the corporation; and shall perform such other duties as from time to time may be assigned to him by the president or by the Board of Directors.

Section 6. Treasurer: The treasurer shall (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected under the provisions of these by-laws; and (c) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or by the Board of Directors.

Section 7. Secretary: The secretary shall: (a) keep the minutes of the shareholders' and of the Board of Directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these by-laws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized; (d) keep a register of the post office address of each shareholder; (e) sign with the president or vice-president (when so authorized) certificates for shares of the corporation the issuance of which shall have been authorized by resolution of the Board of Directors; (f) have general charge of the stock transfer books of the corporation; and (g) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the Board of Directors.

Section 8. Salaries: The salaries of the officers shall be fixed from time to time by the Board of Directors subject to the terms of the preincorporation agreement hereinabove referred to. No officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the corporation.

ARTICLE V: Capital Stock Provisions

Section 1. Shares of stock: The corporation shall issue one class of common stock upon terms and conditions provided by law and its Articles of Incorporation. The value of shares may be fixed from time to time by the Board of Directors, in accordance with the provisions of the preincorporation agreement hereinabove referred to.

Section 2. Payment for shares: The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable. In the absence of fraud in the transaction, the judgment of the Board of Directors as to the value of the consideration received for shares shall be conclusive. No certificate shall be issued for any share until such share is fully paid.

Section 3. Certificates for shares: Each holder of shares of the corporation shall be entitled to a certificate signed by the president, or a vice-president, and the secretary of the corporation, and sealed with the corporate seal, certifying the number of shares owned by him in the corporation. The name and address of the person to whom the shares represented thereby are issued, together with the number of shares and date of issue, shall be entered on the stock transfer books of the corporation. All certificates surrendered to the corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed, or mutilated certificate, a new

one may be issued therefor upon such terms and indemnity to the corporation as the Board of Directors may prescribe. All certificates for shares shall be consecutively numbered or otherwise identified, and shall be substantially in the following form:

(Form for face of certificate)

Organized under the Laws of the
State of *Illinois*

Number.....*1*..... Shares.....*480*.....
.....*Tiller Farms, Inc.*.....

This certifies that*Robert Tiller*..... is the owner of*480*..... fully paid and nonassessable common shares with *no* par value per share, transferable on the books of the corporation in person or by duly authorized attorney upon surrender of this certificate properly endorsed, subject to the restrictions on the back hereof.

In witness whereof the said corporation has caused this certificate to be signed by its duly authorized officers and sealed with the seal of the corporation, this*15th*..... day of*March*..... A.D.,*1958*.....

.....*James Tiller*.....*Robert Tiller*.....
Secretary (SEAL) President

(Form for endorsement on back of certificate)

For value received,*Robert Tiller*..... does hereby sell, assign, and transfer unto*Paul Tiller*.....,*2*..... shares represented by
(buyer) (number)

the within certificate, and does hereby irrevocably constitute and appoint*James Tiller*..... attorney to transfer the said shares on the
(corporation secretary)

books of the within named corporation with full power of substitution in the premises. Dated*June 27*.....,*1959*.....

.....*Robert Tiller*.....
(Signature of Registered Holder)

In the presence of

.....*James Tiller*.....

.....*Mary Tiller*.....

(Signature of Witnesses)

Section 4. Transfer of stock: The shares of the corporation shall be transferable only on the books of the corporation upon surrender of the certificate or certificates representing the same, in the manner stated upon the certificate or certificates so surrendered. Any such transfer is subject to all the restrictions and limitations as stated in the preincorporation agreement referred to in Section 1 of Article III of these by-laws. The person in whose name shares stand on the books of the corporation shall be deemed by the corporation to be the owner thereof for all purposes.

ARTICLE VI: Special Corporate Acts

Section 1. Contracts: The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. Loans: No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by these by-laws or by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, drafts, notes, etc.: All checks, drafts or other orders for the payment of money, and notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation in such manner as shall from time to time be determined by resolution of the Board of Directors except as the by-laws might expressly otherwise provide.

Section 4. Specific authorization: If the Board of Directors fails to make the authorizations in this Article VI, all action taken shall bind the corporation when signed by any two of its officers.

ARTICLE VII: Miscellaneous

Section 1. Bank accounts: The Board of Directors may, by resolution, authorize the opening of corporation bank accounts at any bank or banks they choose. Checks may be drawn on such accounts in the manner provided in Section 3 of Article VI.

Section 2. Liability insurance: The Board of Directors, by resolution, may authorize the corporation to purchase insurance to indemnify the corporation, and its officers, directors, employees, and agents, against liability to third persons or to each other.

Section 3. Waiver of notice: Whenever any notice is required to be given to any shareholder or director of the corporation under the provisions of these by-laws, under the provisions of the Articles of Incorporation, or under the provisions of the statute, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE VIII: Amendments

These by-laws may be altered, amended, or repealed and new by-laws may be adopted by the Board of Directors at any regular or special meeting of the Board of Directors by majority vote.

Adopted the15th..... day ofMarch.....,1958.....

.....Robert Tiller..... Director

.....James Tiller..... Director

.....Paul Tiller..... Director

Attested to:

.....James Tiller..... Secretary

(SEAL)

WAIVER OF NOTICE OF MEETING (DIRECTORS, SHAREHOLDERS)

(To be used at meetings where proper notice was not given)

We, the undersigned, being Directors ofTiller Farms, Inc....., anIllinois..... corporation, do hereby severally waive notice of the time, place, and purposes of this meeting of the Board of Directors of said corporation and do hereby consent that the same be held at theRegistered Office of the Corporation..... on the15th..... day ofAugust.....,1958....., at8:00 p.m..... o'clock, for the transaction of any business which may properly come before said meeting.

(Signed).....Robert Tiller.....

(Signed).....James Tiller.....

(Signed).....Paul Tiller.....

Stock Transfer Book Page

COMMON STOCK

Shareholder's Name*Robert Tiller*..... Residence*R.R. #2, Urbana, Illinois*.....
 Book of account in combination with stock book and stock ledger

Date of transfer of shares by the above named	To whom shares are transferred	Certificates surrendered		From whom shares were transferred (if original issue, enter as such)	New certificate issued		Amount paid on original stock	Number of shares held (balance)	Value of stock transfer stamps affixed
		Certificate number	Number shares		Certificate number	Number shares			
				Original issue	1	480	160 acres farmland	480	

CONSENT TO INFORMAL ACTION BY SHAREHOLDERS

(Used to approve action required to be taken at a meeting of shareholders when no meeting is held)

We, the undersigned, being all of the shareholders in *Tiller Farms, Inc.*....., do by this writing approve, authorize, and consent to the adoption of the following resolution, without further action by the shareholders:

Said resolution, when all the shareholders have signed below, may be treated as having been duly approved and adopted at a proper meeting of the shareholders.

(Signed) *Robert Tiller*..... (seal)

(Signed) *James Tiller*..... (seal)

(Signed) *Paul Tiller*..... (seal)

Dated: *September 1, 1958*.....

Acknowledgment is made of valuable assistance by the following persons in the preparation of this circular: George T. Frampton, Professor of Law, University of Illinois; James J. Elson, Instructor and Research Associate in Agricultural Economics, University of Illinois; Philip C. Zimmerly, Attorney at Law, Champaign, Illinois; and Earl F. Crouse, Doane Agricultural Service Inc., St. Louis, Missouri.

Urbana, Illinois

June, 1958

Cooperative Extension Work in Agriculture and Home Economics: University of Illinois, College of Agriculture, and the United States Department of Agriculture cooperating.
 LOUIS B. HOWARD, Director. Acts approved by Congress May 8 and June 30, 1914.